



Appealing to the First-tier Tribunal (Transport)

England, Wales and Scotland

About this leaflet

This explanatory leaflet is intended to provide helpful information to the layman. It is not a substitute for the Acts or the Rules and has no legal force. If you are unsure of your position or your options, you should seek professional legal advice.

What is the First-tier Tribunal (Transport)?

The First-tier Tribunal was created by the Tribunals, Courts and Enforcement Act 2007. In September 2009 part of the Transport tribunal's work transferred into the General Regulatory Chamber of the First-tier Tribunal. The First-tier Tribunal (Transport) hears and decides appeals against decisions of the Registrar of Approved Driving Instructors (the 'Registrar'). These appeals concern approved driving instructors, trainee driving instructors, and training provider appeals. It can also hear appeals for London service permits against decisions of Transport for London and resolve disputes over postal charges.

The Transport tribunal's Traffic Commissioner work is now dealt with in the Administrative Appeals Chamber of the Upper Tribunal. For more information on these cases please see the leaflet 'Appealing to the Administrative Appeals Chamber of the Upper Tribunal, Traffic Commissioner Appeals', which can be found on the website www.justice.gov.uk or by contacting the office at the address given opposite.

The First-tier Tribunal is an independent judicial body, which is supported administratively by the Ministry of Justice. The tribunal is made up of legally qualified legal members and non-legal members, who have experience in transport operations and its law and procedure.

The offices are in London. Hearings are normally arranged in London, or (for Scottish cases) in Glasgow or Edinburgh.

Where are the offices of the First-tier Tribunal (Transport)?

There is an office in London headed by the tribunal manager, which deals with appeals from First-tier Tribunal decisions in England, Wales and Scotland. The administrative staff process appeals and applications for permission to appeal to the Upper Tribunal. They also prepare case files for the judges, arrange oral hearings and deal with correspondence and queries. The address of the office is:

5th Floor Rolls Building

7 Rolls Buildings

Fetter Lane

London

EC4A 1NL

DX: 160042 Strand 4

Telephone: 020 7947 7422

Fax: 0870 739 4130

Email: transport@hmcts.gsi.gov.uk

You can contact us Monday to Friday, 9am to 5pm.

Who can appeal to the First-tier Tribunal (Transport)?

Both approved driving instructors and trainee instructors may appeal.

The Registrar is a party to an appeal and is represented at it.

Types of cases dealt with by the First-tier Tribunal (Transport)

Most of the work consists of appeals against decisions by the Registrar of Approved Driving Instructors. In addition the tribunal deals with appeals against decisions of Transport for London in the matter of London service permits and disputes over postal charges.

- **Driving Instructor appeals**

A right of appeal arises when, for example, the Registrar:

- a) refuses to enter a name on the register;
- b) refuses to maintain a name on the register;
- c) removes a name from the register; or
- d) refuses to grant or revokes a trainee's licence.

See:

Road Traffic Act 1988, Transport Act 2000,

Motor Cars (Driving Instruction) Regulations 2005 (SI 2005/1902)

London Service Permits appeals

A right of appeal arises if, for example, Transport for London has revoked or suspended a permit or failed to renew or has attached a disputed condition to an existing London service permit.

Postal services disputes

A right of appeal arises if carriers dispute postal charges under section 94 of the Postal Services Act 2000.

Do I need permission to appeal to the First-tier Tribunal?

No. Not unless you are outside the time limit (see below).

Is there a time limit?

Yes. For cases under section 131(2) of the Road Traffic Act 1988 (as amended) (trainee instructors), appeals must be lodged within 14 days of the date on which notice of the decision appealed against was sent to the appellant.

For any other type of case (approved driving Instructors, training provider appeals, London service permit appeals and disputes over postal charges) appeals should be lodged within 28 days of the date on which notice of the decision appealed against was sent to the appellant.

You should therefore lodge any appeal as soon as possible.

Stays (suspension of Orders until the appeal is decided)

An order by the Registrar can be stayed. If the Registrar has made an order against which you could appeal, the order will normally come into force at the time specified in the notice of the decision. However, at that time the Registrar may direct that if an appeal is made the time limit shall not take effect until the appeal has been concluded. If the Registrar has not made such a direction you may apply to the tribunal within 10 days of notice of the decision, supplying a copy of the decision, and the tribunal may itself make a direction if it considers that this is appropriate. You will need to act quickly so that the tribunal has time to respond within the 14 day period. (If the tribunal makes a direction in your favour, the Registrar is entitled then to apply to the tribunal for it to reconsider this. He may also apply to vary an earlier direction.)

What happens next in appeals against decisions by the Registrar?

As set out in the procedure rules governing the tribunal, after receipt of the notice of appeal (with the copy of the decision appealed against enclosed), the tribunal will require the Registrar to provide within 28 days a statement of case together with details of the evidence relied upon. On receipt of this material the tribunal will send copies to the appellant who is in turn required to respond within 14 days with his statement of case together with details of the evidence relied upon.

Preparing the case for hearing

Do I need to instruct representatives?

You may choose to conduct your own case and appear on your own behalf, or to be represented. Limited companies and corporate bodies must normally be represented. Where there is a representative, the tribunal will correspond only with the representative direct. If you dismiss or change your representative, you must inform the tribunal immediately, otherwise documents intended for you will continue to be sent to your former representative. If a representative is not legally qualified, a written authorisation to act signed by you is needed.

Appearing at the hearing.

A representative may appear at the hearing if instructed to do so. The permission of the tribunal will be required if earlier details of the representative have not been provided (see Rule 11 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009).

Where can I get help?

The staff at the tribunal will respond to correspondence and telephone calls, provide copies of documents, and give advice on procedural matters. They cannot advise you on the merits of your case or how to prepare it. If you want advice, you should seek help from a solicitor. A Citizens Advice Bureau or other adviser experienced in road transport law may also be of assistance.

What documents will be needed?

In driving instructor appeals the tribunal asks the Registrar and the appellant to supply all the documents relied upon in support of their cases. If necessary the tribunal gives directions for the case to be properly prepared.

In advance of the hearing you will receive a bundle of documents identical to the bundles which the tribunal members will have.

The appellant and all respondent parties are required to send to the tribunal copies of whatever documents or information they rely on in support of their cases, if not already supplied by the Registrar.

Will there be a hearing in court?

Normally, yes. As soon as the case is ready, and the requirements of the Rules have been met, the tribunal will list it for hearing. All parties will be entitled to appear and address the tribunal when the appeal is heard. Parties and their representatives will be expected to make themselves available within a reasonable timescale.

Can an appeal or an objection be withdrawn?

Yes. It is possible for an appellant to withdraw an appeal, or a respondent party to withdraw their response, by sending a written notice of withdrawal to the tribunal office.

Procedure at the hearing

In general

Is a hearing formal?

No. Proceedings are informal and neither the tribunal or representatives wear robes or wigs. Hearings are in public unless there are exceptional circumstances. On the day of the hearing you are advised to arrive a little before the appointed time so that you can make yourself known to the court clerk, familiarise yourself with the courtroom layout, get the documentation in order, and perhaps discuss the case with other parties (if any).

Is an appeal a full hearing or a review?

Decisions by the Registrar will always have been made on paper and on appeal the hearing before the tribunal will be the first hearing. Accordingly, the Registrar's representative must establish his case.

Procedure at appeals against decisions by the Registrar

The appeal hearing will generally start by the judge asking the Registrar's representative to outline the reasons for the Registrar's decision, and to call any witnesses. You, or your representative, are also entitled to make an opening statement, and to call

witnesses. Both sides may cross-examine witnesses. At the end both the Registrar's representative and the appellant will be asked to make a final statement. During the hearing the tribunal members may ask questions in order to obtain relevant information or to clarify what has been said. If necessary, the tribunal will give guidance on procedure during the hearing. If you are in doubt about any aspect of the hearing it is best to ask straight away.

Hearing in absence

What if I am unable to attend the hearing of the appeal?

You should inform the tribunal immediately of any problem you may have in attending the hearing. However, if you were absent from the main hearing for a good reason, and the case was determined in your absence, you may be able to apply to the tribunal to set aside its determination and re-list the appeal for hearing. You will have to satisfy the tribunal that you had a good reason for failing to attend the hearing.

Decisions and final orders

Will there be a written decision?

Yes. The tribunal may announce its decision at the conclusion of the main hearing or say that the decision will be given later. In either event, the tribunal always draws up a formal order setting out what it has decided and sends it to all the parties. It also provides written reasons.

Costs and fees

Will I have to pay fees to the tribunal?

No. The services of the tribunal are free of charge to users.

Will I be liable to pay costs?

Possibly. The tribunal can order one party to pay the costs of another party, if their conduct has been frivolous, vexatious, improper or unreasonable. More often, each party has to pay only its own costs. If there is only one party to the case, the question of costs does not arise.

Can I obtain legal aid?

No. Legal aid is not available in this jurisdiction.

Further appeals

Can I appeal against the decision of the First-tier Tribunal (Transport)?

Yes, but only on a point of law. Appeal lies to the Upper Tribunal. You should consider taking professional legal advice before embarking on this course.

If you wish to appeal you should apply to the tribunal who heard your case for permission to appeal within 28 days.

Appealing against a decision of the First-tier Tribunal (Transport)

This leaflet contains only a summary of the actions you can take If you wish to challenge a tribunal's decision or apply to change a tribunal's decision. It is not an exhaustive statement of the law. You may wish to seek advice about your rights. It applies whether the decision has been made by the tribunal at a hearing or whether the decision has been made on the papers alone.

Please Note

The rights to apply for permission to appeal to the Upper Tribunal, correcting and setting aside a decision are also available to The Registrar of the Driving Standards Agency and other respondents.

If you are outside a time limit, you may apply for an extension of time, explaining why your application is late and why you should be granted an extension of time.

Appeal to the Upper Tribunal

If you think the First-tier Tribunal has made an error of law, you may apply for permission to appeal to the Upper Tribunal against the decision. The following are some examples of what is meant by error of law:

- the tribunal applied the law incorrectly
- the tribunal conducted the proceedings in breach of the proper procedures
- the tribunal failed to give adequate reasons for its decision.

How do I apply for permission to appeal to the Upper Tribunal?

If you want to make an application for permission to appeal to the Upper Tribunal and you have not received written reasons for the decision, you must apply to the tribunal for these. The tribunal office must receive your written application for the full reasons within 28 days after the date that the tribunal sent the decision notice to you.

If, having considered the written reasons, you think that the decision of the tribunal was based on an error of law, you may then apply to the First-tier Tribunal (Transport) for permission to appeal against the decision to the Upper Tribunal.

Your application for permission to appeal must be received in the First-tier Tribunal office no later than 28 days from the date the tribunal sent you full written reasons; and must identify the decision of the tribunal to which it relates, the alleged error or errors in the decision and state the result you are seeking.

You may apply to the tribunal for permission to appeal to the Upper Tribunal by completing the permission to appeal form which can be obtained, along with guidance on filling in the form, by telephoning 020 7947 7422 or downloaded from our website at www.justice.gov.uk

An application for permission to appeal will be considered by a judge of the First-tier Tribunal (Transport). The judge will:

- first of all consider whether to review the decision and, if there is an error of law, make a fresh decision or arrange for your case to be re-decided (see Review below);
- grant permission, in which case you can make your appeal to the Upper Tribunal; or
- refuse permission, in which case you then have the option of applying directly

to the Upper Tribunal for permission.

If the appeal proceeds to the Upper Tribunal, that tribunal has the power to set aside the First-tier Tribunal's decision and give a fresh decision or refer the case to the First-tier Tribunal for re-hearing.

Review

When the tribunal receives an application for permission to appeal it will first consider whether to review the decision; that is, to determine whether the tribunal decision contains an error of law. If, as a result of the review, the tribunal decides there was an error of law in the decision you will be notified and given the opportunity to make representations before any action is taken as a result of a review. This action could mean changing the decision against which you are appealing.

Corrections

If you think the decision notice contains an accidental error (for example the tribunal may have written 2009 instead of 2008 as the applicable date) you may write asking for a correction to be made. This rule only applies to what might be called slips of the pen.

Setting aside

If you think there has been an irregularity in the arrangements for dealing with your appeal, you may write to ask for the tribunal's decision to be set aside (cancelled). Your application must be received by the tribunal no later than 28 days after the day when the tribunal sent you the decision.

Examples of irregularities in the arrangements could be that a document relating to your appeal was not considered by the tribunal or some other procedural irregularity or that you or your representative was not present. The tribunal will set aside the decision if it is in the interests of justice to do so. If you are asking that the decision be set aside because you or your representative was not present, you must explain why. If you think there was an irregularity, you must say what it was.

Standards and complaints

Standards

The tribunal has certain standards of service and performance that it is committed to reaching. It aims to:

- respond to requests for forms within two working days
- process new cases and serve acknowledgements of notices of appeal within five working days
- decide applications for stays as soon as possible
- offer hearing dates within six weeks of readiness
- notify parties of hearing dates within five working days of fixing the date
- draw up and dispatch to the parties signed decisions within three working days of their receipt
- deal with all inquiries and correspondence, courteously and promptly.

Comments or complaints

If you have any comments or complaints about the service you have received from the tribunal contact the Delivery Manager:

Delivery Manager

5th Floor Rolls Building

7 Rolls Buildings

Fetter Lane

London

EC4A 1NL

Email: transport@hmcts.gsi.gov.uk

If you then wish to take the matter further contact:

Cluster Manager

HM Courts & Tribunals Service

5th Floor, Fox Court

14 Grays Inn Road

London WC1XB 8HN

PLEASE NOTE: Neither the Delivery Manager nor the Customer Service Unit can deal with complaints about judicial decisions.

The meaning of words

The following words are either used in this leaflet or may be used in documents you receive from the office of the First-tier Tribunal (Transport).

- An **appeal** is made by a person.
- An **appellant** is the person, or other body, who is appealing.
- The tribunal office calls a person who is applying for permission to appeal to the Upper Tribunal an applicant.
- A **direction** is a written instruction by the tribunal judge on the procedure that must be followed. The judge will make a direction at the beginning of an appeal as to the order in which the parties are to make their submissions and the time limits for doing so.
- A **point of law, error of law and wrong in law**: examples are given in the section titled “**Reasons for appealing**”. You must bear in mind that there may be other points of law and if you are uncertain you may like to seek advice as described in that section.
- A **procedural error** is something that has gone wrong with the procedure in an appeal. However, only certain limited errors give you the right to have a decision **set aside**. These are set out in the Tribunal’s Procedure Rules.
- A **response** contains the observations made by a **respondent** in a written document answering the points made in an appeal or the points that the judge has raised in a direction. A **response** may also be called **observations or submissions**.
- A **respondent** is a person who has a right to take part in or oppose an **appeal** that has been made to the First-tier Tribunal (Transport). When an individual appeals to the First-tier Tribunal (Transport), the respondent will normally be:
 - the Registrar of Approved Driving Instructors in Driving Instructors cases
 - Transport for London in London Service Permits cases
 - the universal service provider or carrier in disputes over postal charges.
 - A submission is made by any party in a written document making or answering the points made in an appeal or dealing with the points that the judge has raised in a **direction**. **Submissions** may also be called **observations**.

General Note

The law governing the procedure on appeals to the First-tier Tribunal (Transport) are set out in The First-tier Tribunal General Regulatory Chamber Rules 2009. These are available on the tribunal website (under the heading "Rules & Legislation") and also the Office of Public Sector Information, OPSI, website at www.opsi.gov.uk. Copies of statutes and statutory instruments referred to in this leaflet can also be obtained from The Stationery Office (Telephone 0870 600 5522, website www.tsoshop.co.uk). It is important to note that statutes, regulations and rules may have been amended by subsequent legislation. Up to date versions can usually be found in the Encyclopaedia of Road Traffic or in Halsbury's Statutes.

Decisions made by the First-tier Tribunal (Transport) are available on our website (www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/transport/index.htm). Historical decisions of the Transport tribunal from 2000 onwards can also be found at this address. Decisions are also supplied to subscribers - contact the tribunal office for details. In addition, the Tribunal's Digest is available on the website. This covers decisions by reference to subject matter and includes a chronological List of Decisions from 1985 onwards. All decisions are available from the tribunal office on request.

Useful address:

The Registrar of Approved Driving Instructors
Driving Standards Agency
The Axis Building
112 Upper Parliament Street
Nottingham NG1 6LP

Tel: 0115 936 6666

Fax: 0115 936 6582